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FILED

Date 4/22/16 By Susan Saylor

9 **BEFORE THE**
10 **STRUCTURAL PEST CONTROL BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2016-53

13 **ALVARO E. DESANTOS-MOREIRA**
14 **P.O. Box 12229**
Palm Desert, CA 92255

A C C U S A T I O N

15 **Applicator's License No. RA 50419**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as the
21 Registrar/Executive Officer of the Structural Pest Control Board (Board), Department of
22 Consumer Affairs.

23 2. On or about October 29, 2009, Board issued Applicator's License Number RA 50419
24 to Alvaro E. DeSantos-Moreira (Respondent). The Applicator's License was in full force and
25 effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless
26 renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

5. Section 8625 of the Code states:

The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence

1 of the fact that the conviction occurred, but only of that fact, and the board may
2 inquire into the circumstances surrounding the commission of the crime in order to fix
the degree of discipline or to determine if the conviction is substantially related to the
qualifications, functions, and duties of the licensee in question.

3 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
4 'registration.'

5 9. Section 8649 of the Code states:

6 Conviction of a crime substantially related to the qualifications, functions, and
7 duties of a structural pest control operator, field representative, applicator, or
registered company is a ground for disciplinary action. The certified record of
conviction shall be conclusive evidence thereof.

8 10. Section 8654 of the Code states:

9 Any individual who has been denied a license for any of the reasons specified
10 in Section 8568, or who has had his or her license revoked, or whose license is under
suspension, or who has failed to renew his or her license while it was under
11 suspension, or who has been a member, officer, director, associate, qualifying
manager, or responsible managing employee of any partnership, corporation, firm, or
12 association whose application for a company registration has been denied for any of
the reasons specified in Section 8568, or whose company registration has been
revoked as a result of disciplinary action, or whose company registration is under
13 suspension, and while acting as such member, officer, director, associate, qualifying
manager, or responsible managing employee had knowledge of or participated in any
14 of the prohibited acts for which the license or registration was denied, suspended or
revoked, shall be prohibited from serving as an officer, director, associate, partner,
15 qualifying manager, or responsible managing employee of a registered company, and
the employment, election or association of such person by a registered company is a
16 ground for disciplinary action.

17 11. Section 8655 of the Code states:

18 A plea or verdict of guilty or a conviction following a plea of nolo contendere
19 made to a charge substantially related to the qualifications, functions, and duties of a
structural pest control operator, field representative, applicator, or registered company is
20 deemed to be a conviction within the meaning of this article or Section 8568 of this
chapter. The board may order the license or registration suspended or revoked, or may
21 decline to issue a license, when the time for appeal has elapsed, or the judgment of
conviction has been affirmed on appeal or when an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent order under the
provisions of Section 1203.4 of the Penal Code allowing the individual or registered
23 company to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the
verdict of guilty, or dismissing the accusation, information or indictment.

24 REGULATORY PROVISIONS

25 12. California Code of Regulations, title 16, section 1937.1 states:

26 For the purposes of denial, suspension or revocation of a license or company
27 registration pursuant to Division 1.5 (commencing with Section 475) of the code, a crime
or act shall be considered to be substantially related to the qualifications, functions or
28 duties of a licensee or registered company under Chapter 14 of Division 3 of the code if to
a substantial degree it evidences present or potential unfitness of such licensee or

1 registered company to perform the functions authorized by the license or company
2 registration in a manner consistent with the public health, safety, or welfare. Such crimes
3 or acts shall include, but not be limited to, the following:

4 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

5 (b) Commission of any of the following in connection with the practice of
6 structural pest control:

7 (1) Fiscal dishonesty

8 (2) Fraud

9 (3) Theft

10 (4) Violations relating to the misuse of pesticides.

11 13. California Code of Regulations, title 16, section 1937.2 states:

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13 (b) When considering the suspension or revocation of a structural pest control
14 license or company registration on the grounds that the licensee or registered company
15 has been convicted of a crime, the board, in evaluating the rehabilitation of such person or
16 company and his or her or its present eligibility for a license or company registration will
17 consider the following:

18 (1) Nature and severity of the act(s) or offense(s).

19 (2) Total criminal record.

20 (3) The time that has elapsed since commission of the act(s) or offense(s).

21 (4) Whether the licensee or registered company has complied with any terms of
22 parole, probation, restitution or any other sanctions lawfully imposed against the licensee
23 or registered company.

24 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4
25 of the Penal Code.

26 (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

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28 COST RECOVERY

14. Section 125.3 of the Code states, in pertinent part, that a Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(July 1, 2015 Criminal Convictions for Possession of a**
3 **Controlled Substance for Sale on January 30, 2015)**

4 15. Respondent has subjected his applicator license to disciplinary action under sections
5 490 and 8649 of the Code in that he was convicted of crimes that is substantially related to the
6 qualifications, functions, and duties of a licensee. The circumstances are as follows:

7 a. On or about July 1, 2015, in a criminal proceeding entitled *The People of*
8 *the State of California v. Alvaro Ernesto Moreira, aka Alvaro Ernesto Desantos Moreira, aka*
9 *Alvaro Ernesto Desantos Moreira*, in Riverside County Superior Court, case number INF1500168,
10 Respondent was convicted on his plea of guilty to violating Health and Safety Code section 11378
11 (possession of a controlled substance for sale), a felony. Pursuant to a plea agreement, the
12 violations of Health and Safety Code section 11379(a), (import/sale/distribute controlled
13 substance) and Health and Safety Code section 11350(a), (possession of a controlled substance),
14 both felonies, were dismissed.

15 b. As a result of the conviction, Respondent was granted formal probation for
16 three years and was committed to the custody of the sheriff for 120 days with 13 days of pre-
17 custody credit. Respondent was granted 107 days to be served in the work release program.
18 Respondent was further ordered to pay fees, fines and restitution.

19 c. The circumstances that led to the convictions are that on or about January
20 30, 2015, officers with the Palm Springs Police Department conducted a traffic stop. Upon
21 contact with Respondent, officers immediately noticed the strong odor of marijuana emanating
22 from within the vehicle, and observed a plastic baggie on the floor board with a green leafy
23 substance. In a search incident to arrest, officers found a bag with 33.9 grams of
24 methamphetamine, 0.9 grams of Cocaine, two digital scales and \$127.00 in U.S. Currency.
25 Respondent was subsequently arrested.

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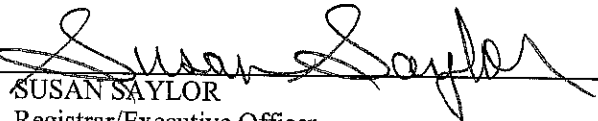
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1 2. Ordering Alvaro E. DeSantos-Moreira to pay the Structural Pest Control Board the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: 4/22/16


SUSAN SAYLOR

Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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